

Notice of Allowability

Application No.

10/817,549

Examiner

Matthew F. DeSanto

Applicant(s)

WAKSMAN ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/7/05.
2. ☒ The allowed claim(s) is/are 29, 30, 31, 32.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 8/8/05
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 9/6/05
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mark Murphy on September 6, 2005.

The application has been amended as follows:

Replace claims 29, 30, with the claims below.

Claim 29:

A catheter for use in a system for intraluminal treatment of a selected site in a body of a patient by at least one treating element which is movable in the catheter by means of pressurized fluid, the catheter comprising:

a first elongated tube having a lumen closed to outside said catheter at its distal end and sized to slidably receive the treating element;

wherein said treating element comprising a hollow cylinder encapsulating a radioactive material; and

a second elongated tube in parallel relation to the first elongated tube and having a lumen open at its distal end and sized to receive a guidewire; and

a third elongated tube for receiving the first and second elongated tubes and defining a space between the third tube and the first and second tubes, the space comprising a fluid return lumen in fluid communication with an opening in the lumen of

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the first elongated tube at the distal end of said first elongated tube, said space not opening to outside said catheter at the distal end thereof,

wherein said third elongated tube is closed at the distal end.

Claim 30:

A catheter for use in a system for intraluminal treatment of a selected site in a body of a patient by at least one treating element which is movable in the catheter by means of pressurized fluid, the catheter comprising:

a first elongated tube having a lumen closed to outside said catheter at its distal end and sized to slidably receive the treating element;

wherein said treating element comprising a hollow cylinder encapsulating a radioactive material; and

a second elongated tube in parallel relation to the first elongated tube and having a lumen open at its distal end and sized to receive a guidewire; and

a third elongated tube for receiving the first and second elongated tubes and defining a space between the third tube and the first and second tubes, the space comprising a fluid return lumen in fluid communication with an opening in the lumen of the first elongated tube at the distal end of said first elongated tube,

wherein said first elongated tube, said second elongated tube, and said third elongated tube are substantially the length of the catheter,

wherein said third elongated tube is closed at the distal end.

Reasons for Allowance

2. The following is an examiner's statement of reasons for allowance:

The subject matter of the independent claims could either not be found or was not suggested in the prior art of record. The subject matter not found was a catheter with a radioactive material that is received in a first lumen, and wherein the catheter has three tubes and the relationship between each of the lumens and tubes as well as in combination with the other elements or steps of the claim. The examiner used Figure 8A as a reference because this figure shows the second elongated opened at the distal end, even though the third elongated tube is closed as the distal end.

The independent claims also include other patentable subject matter in combination with the other elements or steps of the claim not mention in the above paragraph.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F. DeSanto whose telephone number is 571-272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Matthew DeSanto
Art Unit 3763
September 19, 2005



NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700